MAINE SUPREME JUDICIAL COURT Reporter of Decisions
Decision: 2012 ME 107
Docket: Aro-11-538
Submitted
On Briefs: May 24, 2012
Decided: August 9, 2012

Panel: SAUFLEY, C.J., and ALEXANDER, SILVER, MEAD, GORMAN, and JABAR, JJ.

STATE OF MAINE

v.

MICHELLE E. FUNDALEWICZ

GORMAN, J.

[¶1] Michelle E. Fundalewicz appeals from the judgment of conviction of violation of a protection order (Class D), 19-A M.R.S. § 4011(1) (2011), entered in the District Court (Presque Isle, *O'Mara, J.*). Fundalewicz contends that the State failed to establish the corpus delicti for the offense charged. We affirm the judgment.

I. BACKGROUND

[¶2] Viewing the evidence in the light most favorable to the State, the following facts were established at trial. On May 10, 2011, Paul Clark obtained a temporary protection from abuse order on behalf of his thirteen-year-old son against Fundalewicz, the child's mother and Paul's ex-girlfriend. At the time, the child resided with Paul and Paul's then-fiancée (now wife), Miranda Clark.

[¶3] On June 6, 2011, the child received a phone call on the home's landline while Paul or both Paul and Miranda were not home. When Paul returned home, he noticed that the child was acting strangely and convinced the child to talk with him. The child eventually revealed that Fundalewicz had called him earlier that day. Paul reported the incident to the police. The child provided a written statement to the police stating that Fundalewicz did call and speak with him on that date.

[¶4] The State charged Fundalewicz with violation of a protection order (Class D), 19-A M.R.S. § 4011(1). Fundalewicz pleaded not guilty to the charge, and the matter proceeded to a jury-waived trial.

[¶5] At trial, the child testified that it was instead his cousin who called him that day. He testified that he said it was Fundalewicz in his written statement to police because Paul had told him that if he did not name Fundalewicz, the child would have to move back in with Fundalewicz, where he would "get treated like crap" as he had been when he lived with his mother in the past. Paul testified that he did not tell the child what to write in the police report.

[¶6] Miranda testified that a few days after the incident, she spoke with Fundalewicz on the phone, and Fundalewicz admitted to having called and spoken with the child on June 6.

[¶7] At the close of the trial, Fundalewicz orally moved for a judgment of acquittal on the grounds that "the State failed to establish a corpus for the offense charged" because the State did not provide "evidence independent of any potentially incriminating statements that [Fundalewicz] . . . made." The court denied the motion, found Fundalewicz guilty of violating the protection order, and sentenced her to pay a $400 fine. Fundalewicz timely appeals.

II. DISCUSSION

[¶8] Fundalewicz contends that there is insufficient evidence to support her conviction in light of the corpus delicti rule. Corpus delicti means "body of the crime." Black's Law Dictionary 395 (9th ed. 2009) (quotation marks omitted). The rule originated in common law and is intended to prevent the possibility of a conviction for a crime that never actually occurred. Field & Murray, *Maine Evidence* § 801.9 at 447 (6th ed. 2007); *see State v. Bleyl*, 435 A.2d 1349, 1367 (Me. 1981). Pursuant to this doctrine, before a defendant's self-inculpatory out-of-court statement may be admitted in evidence[1] and considered by the fact-finder, the State must present sufficient credible evidence to "create a

[1] Miranda Clark was the first witness to testify, and her testimony established Fundalewicz's admission of guilt. Although we have noted a "strong preference for proof of corpus delicti prior to admitting evidence of a defendant's confession or admission," we have also noted that a trial court has "discretion to control the order of proof pursuant to the corpus delicti rule." *State v. Knight*, 2002 ME 35, ¶ 12, 791 A.2d 110 (quotation marks omitted).

substantial belief that the crime charged has been committed by some person."[2] *State v. Anglin*, 2000 ME 89, ¶ 9, 751 A.2d 1007 (quotation marks omitted); *see State v. Chad B.*, 1998 ME 150, ¶ 5, 715 A.2d 144.

[¶9] The "substantial belief" standard of proof is a low one. *See State v. Snow*, 438 A.2d 485, 487 (Me. 1981) (describing as a "high hurdle" a defendant's ability to persuade an appellate court to vacate his conviction on corpus delicti grounds). The State need not establish the corpus delicti beyond a reasonable doubt; "that standard is required to be met by the total evidence, of which the defendant's own confession is a properly considered part." *Bleyl*, 435 A.2d at 1367; *see State v. Spearin*, 477 A.2d 1147, 1151 (Me. 1984). Rather, we have described the burden as "less than a fair preponderance of the evidence and resembl[ing] the probable cause standard." *Spearin*, 477 A.2d at 1151 (quotation marks omitted). Thus, a substantial belief "exists where the facts and circumstances within the knowledge of the factfinder would warrant a prudent and cautious person to believe that the crime was committed by someone." *State v. Knight*, 2002 ME 35, ¶ 11, 791 A.2d 110 (alterations omitted) (quotation marks omitted). This test recognizes the "superior opportunity" enjoyed by the trial court "to hear the evidence as it was presented through live witnesses and is consistent

[2] Although we have previously described the corpus delicti rule as a two-prong test, we recognize that the second prong is essentially the same as the sufficiency of the evidence standard that applies in any criminal case. *Knight*, 2002 ME 35, ¶ 12 n.4, 791 A.2d 110.

with the same policy by which deference is accorded to a trial court's factfindings in civil cases." *Snow*, 438 A.2d at 487; *see Ma v. Bryan*, 2010 ME 55, ¶¶ 7-8, 997 A.2d 755.

[¶10] Here, the trial court determined that the State met its corpus delicti burden by establishing that the child received a phone call, that he exhibited a change in his demeanor after receiving the phone call, and that he told his father and stepmother certain things about the phone call. We review the court's factual findings for clear error, but we review de novo whether those facts are "sufficient to establish probable cause to believe that a crime has been committed by someone."[3] *State v. Chad B.*, 1998 ME 150, ¶ 8, 715 A.2d 144 (quotation marks omitted).

[¶11] Although these facts on which the court relied rest on circumstantial evidence and reasonable inferences, that does not diminish the record support for corpus delicti. "The law is well established that circumstantial evidence is no less conclusive than direct evidence in supporting a conviction." *State v. Work*, 603 A.2d 464, 465 (Me. 1991). The fact-finder also is permitted to draw from the evidence any reasonable inference, that is, "a deduction as to existence of a fact which human experience teaches us can reasonably and logically be drawn from

[3] The crime charged in this case is unique because no crime was committed unless it was Fundalewicz who made the call to her son in violation of the protection order. Thus, in this instance, to prove that a crime was committed, the State had to prove that it was Fundalewicz who made the phone call.

proof of other facts." *Ma*, 2010 ME 55, ¶ 7, 997 A.2d 755 (quotation marks omitted). What is true for a verdict is equally true for a corpus delicti determination. *See Snow*, 438 A.2d at 487.

[¶12] Here, there was evidence that (1) the child did receive a phone call from someone at the day and time in question; (2) at that time, there was a protection order in place prohibiting Fundalewicz from contacting the child; (3) the child exhibited a distressed reaction to that call; (4) the child's distress continued for some period of hours after the call; and (5) the child's report of the call to his father prompted his father to report the call to the police. There was also evidence that, around this time, the child was also generally upset at the prospect of living with his mother.

[¶13] From this evidence, the fact-finder could reasonably infer that the child's father called the police because the caller was Fundalewicz. In *Snow*, 438 A.2d at 486, 488, we described as sufficient to satisfy the corpus delicti requirement that the victim's injuries were inconsistent with the description of the accident given by the defendant. Similarly, in *State v. Discher*, 597 A.2d 1336, 1340 (Me. 1991), we approved the lack of other reasonable explanations for an event as a factor supporting a finding that corpus delicti was established. Likewise, because only Fundalewicz was barred from calling the child, Paul's call

to the police after the child identified the caller is both consistent with the caller having been Fundalewicz and inconsistent with other explanations of the event.

[¶14] Although largely circumstantial, this evidence, along with the reasonable inferences that may be drawn from it, adequately supports the corpus delicti requirement, as well as the court's finding that Fundalewicz did in fact call her son in violation of the protection order.[4]

The entry is:

Judgment affirmed.

On the briefs:

Matthew A. Hunter, Esq., Presque Isle, for appellant Michelle Fundalewicz

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[4] Given this conclusion, we need not address the State's alternative argument, that M.R. Evid. 801(d)(1)(B) authorized the admission of the child's statements to Paul for the truth of the matter asserted.